

No. 22-12685

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UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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STATE OF ALABAMA, et al.,  
*Petitioners,*

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, et al.,  
*Respondents.*

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Petition for Review of Action of the U.S. Environmental Protection Agency

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**JOINT MOTION FOR FURTHER ABEYANCE**

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ROBERT D. TAMBLING  
Office of the Attorney General  
State of Alabama  
501 Washington Avenue  
Post Office Box 300152  
Montgomery, AL 36130  
334-242-7445  
rtambling@AlabamaAG.gov

PAUL CHRISTIAN SASSER, JR.  
STEVEN SHAWN SIBLEY  
Alabama Department of  
Environmental Management  
P. O. Box 301463  
Montgomery, Alabama 36130-1463  
334-271-7857  
pcsasser@adem.alabama.gov  
*Attorneys for Petitioners*

TODD KIM  
*Assistant Attorney General*

MIRANDA M. JENSEN  
*Attorney*  
Environment and Natural Resources Division  
U.S. Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044  
(202) 598-3071  
miranda.jensen@usdoj.gov  
*Attorney for Respondents*

## **CERTIFICATE OF INTERESTED PERSONS**

Pursuant to Eleventh Circuit Rule 26.1-2, the undersigned certify that, to the best of their knowledge, the following persons or entities may have an interest in the outcome of this case:

1. Alabama Department of Environmental Management
2. Alabama Municipal Electric Authority
3. Alabama Power Company (ALP-PQ) (Intervenor)
4. Balch & Bingham LLP (Counsel for Intervenors)
5. Barber, Julia B. (Counsel for Intervenors)
6. Blackman, Daniel – Regional Administrator, U.S. EPA, Region 4
7. Calhoun Power Company, LLC
8. Calpine Corporation
9. Capitol Power Group, LLC
10. CER Generation, LLC
11. Constellation Energy Corporation (CEG)
12. Decatur Energy Center, LLC
13. Diamond Alabama, LLC
14. East Alabama Generating, LLC
15. Jensen, Miranda M. –Attorney, U.S. Dept. of Justice (counsel for Respondents)
16. Johnson, Claire B. (counsel for Intervenors)
17. Kim, Todd – Assistant Attorney General, U.S. Dept. of Justice

18. LeFleur, Lance R. – Director, Alabama Dept. of Environmental Management
19. Marshall, Steve – Attorney General, State of Alabama
20. Mobile Energy, LLC
21. Moore, III, C. Grady (counsel for Intervenors)
22. Morgan Energy Center, LLC
23. PowerSouth Energy Cooperative (Intervenor)
24. Regan, Michael S. – Administrator, U.S. EPA
25. SABIC Innovative Plastics US, LLC
26. Sasser, Paul Christian, Jr. (counsel for Petitioner Alabama Dept. of  
Environmental Management)
27. Saudi Basic Industries Corporation (2010.SR)
28. Sibley, Steven Shawn (counsel for Petitioner Alabama Dept. of Environmental  
Management)
29. Southern Power Company (Intervenor)
30. State of Alabama
31. Tambling, Robert D. (counsel for Petitioner State of Alabama)
32. Tenaska Alabama, Inc.
33. Tenaska Alabama Partners, LP
34. Tennessee Valley Authority
35. The Southern Company (SO)
36. U.S. Environmental Protection Agency

37. Walton Discover, LLC

s/ Miranda M. Jensen

Miranda M. Jensen

Attorney for Respondents

s/ Paul Christian Sasser, Jr. (with permission)

Paul Christian Sasser, Jr.

Attorney for Petitioners

## **JOINT MOTION FOR FURTHER ABEYANCE**

Respondent U.S. Environmental Protection Agency et al. (EPA) and Petitioner State of Alabama et al. (the State) (collectively, the Parties) jointly move the Court for a further 45-day abeyance of this case. The case is currently in abeyance until March 16, 2023, pursuant to the Court's order issued on January 30, 2023. EPA and the State have conferred with Intervenor, who stated that they consent to the extension.

In further support of this motion, the Parties state as follows:

1. On August 17, 2022, Petitioners sought judicial review of EPA's final action entitled "Finding of Failure to Submit a Clean Air Act Section 110 State Implementation Plan for Interstate Transport for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)," which was published in the Federal Register on June 22, 2022, at 87 Fed. Reg. 37235 (Finding of Failure to Submit). In the Finding of Failure to Submit, EPA concluded that Alabama's proposed State Implementation Plan (SIP) revision, submitted to EPA on April 21, 2022, did not meet minimum completeness criteria in accordance with 42 U.S.C. § 7410(k)(1)(A) and 40 C.F.R. Part 51, Appendix V. *See* 87 Fed. Reg. at 37236.
2. On June 21, 2022, the State resubmitted a SIP submission to EPA with additional information regarding completeness. EPA reviewed the June

21, 2022 submission on the merits and proposed to disapprove the submittal. 87 Fed. Reg. 64412 (Oct. 25, 2022).

3. On September 14, 2022, Intervenors filed their motion for leave to intervene in support of Petitioners. EPA opposed the motion on October 3, 2022.
4. The State and EPA filed a joint motion to hold this appeal in abeyance on October 14, 2022 (Joint Motion) to allow EPA time to act on Alabama's June 2022 SIP submission. In support of the abeyance, the two parties stated that "[a]beyance is appropriate to preserve resources for both the parties and the Court," because final action on the June 2022 SIP submission "could moot or narrow the issues in this case," and "[a]n abeyance would also give the parties time to engage in negotiations." Joint Mot. 2. Intervenors filed an opposition on October 17, 2022 that proposed a 45-day limit on the abeyance or a court order adopting a briefing schedule.
5. On November 2, 2022, the Court granted the Joint Motion in part and ordered that this case be held in abeyance for 60 days, until January 1, 2023. The Court also granted Intervenors' Motion for Leave to Intervene.

6. On a joint motion by EPA and the State for a further abeyance, the Court ordered on January 30, 2023 that the case be held in abeyance for an additional 45 days, until March 16, 2023.
7. EPA signed a final action on January 31, 2023 that rescinded the Finding of Failure to Submit. That action was published on February 13, 2023, at 88 Fed. Reg. 9191, and it became effective on March 15, 2023. The rescission action is subject to judicial review under Clean Air Act Section 307(b)(1), 42 U.S.C. § 7607(b)(1), for 60 days following publication, or through April 14, 2023.
8. The Parties are conferring about next steps in the litigation. Accordingly, the Parties seek a further abeyance of 45 days to allow the period for judicial review of the rescission action to expire and for further discussions among the parties.
9. The Parties have conferred with Intervenorors about a further 45-day abeyance. Intervenorors have stated that they consent to the extension.
10. No party is prejudiced by the Parties' jointly proposed continuation of the abeyance.

For the foregoing reasons, the Parties respectfully request that the Court grant this joint motion and place the case into a further abeyance for 45 days, until April 30, 2023.

Dated: March 16, 2023.

TODD KIM  
*Assistant Attorney General*

s/ Miranda M. Jensen  
MIRANDA M. JENSEN  
United States Department of Justice  
Environment & Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 598-3071  
miranda.jensen@usdoj.gov

*Attorney for Respondents*

STEVE MARSHALL  
ATTORNEY GENERAL

/s/ Robert D. Tambling (with permission)  
Robert D. Tambling  
*Attorney for Petitioners*

ADDRESS OF COUNSEL:

State of Alabama  
Office of the Attorney General  
P.O. Box 300152  
Montgomery, Alabama 36130-0152  
Phone: (334) 242-7445  
Fax: (334) 242-2433  
Email: Robert.Tambling@AlabamaAG.gov

/s/ Paul Christian Sasser, Jr. (with permission)  
Paul Christian Sasser, Jr.  
*Attorney for Petitioners*

/s/ Steven Shawn Sibley (with permission)  
Steven Shawn Sibley



*Attorney for Petitioners*

ADDRESS OF COUNSEL:

Alabama Department of Environmental Management

Office of General Counsel

P.O. Box 301463

Montgomery, Alabama 36130-1463

Phone: (334) 271-7855

Fax: (334) 260-4544

Email: pcsasser@adem.alabama.gov

ssibley@adem.alabama.gov

### **CERTIFICATE OF COMPLIANCE**

I certify that this motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 624 words according to the count of Microsoft Word. I further certify that this motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared using Microsoft Word in 14-point Garamond font.

s/ *Miranda M. Jensen*  
MIRANDA M. JENSEN

### **CERTIFICATE OF SERVICE**

I certify that on March 16, 2023, I filed the foregoing JOINT MOTION FOR FURTHER ABEYANCE using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

s/ *Miranda M. Jensen*  
MIRANDA M. JENSEN